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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF370

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Sand Point City Dock Replacement Project in Sand Point, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) to issue an incidental harassment authorization (IHA) previously issued to ADOT&PF to incidentally take nine species of marine mammal, by Level A and Level B harassment, during construction activities associated with the Sand Point City Dock Replacement Project in Sand Point, Alaska. ADOT&PF reported that the project has been delayed. The IHA issued on October 13, 2017 has effective dates of August 1, 2018 through July 31, 2019. ADOT&PF requested that a new IHA be issued to conduct their work between May 31, 2019 and May 30, 2020. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the first IHA. The authorized take numbers would be the same as authorized previously, and the required mitigation, monitoring, and reporting would remain the same as authorized for the 2018 IHA referenced above. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is notifying the public about the issuance of an

IHA to ADOT&PF to incidentally take marine mammals, by Level A and Level B harassment only, during the specified activity.

DATES: The IHA is valid May 31, 2019, through May 30, 2020.

ADDRESSES: An electronic copy of the final Authorization previously issued for 2018-2019, ADOT&PF's application, and related documents may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence

uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (i.e., the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that

would preclude this categorical exclusion. Accordingly, NMFS had determined that the issuance of the 2018-2019 IHA qualified to be categorically excluded from further NEPA review and signed a Categorical Exclusion memo in October 2017. Since the new 2019-2020 IHA covers the same work covered in the former 2018-2019 IHA, NMFS is relying on this same Categorical Exclusion memo for the issuance of this IHA.

History of Request

On September 16, 2016, NMFS received an application from ADOT&PF for the taking of marine mammals incidental to replacing the city dock in Sand Point, Alaska. On April 11, 2017, ADOT&PF submitted a revised application that NMFS determined was adequate and complete. ADOT&PF proposed to conduct in-water activities that may incidentally take, by Level A and Level B harassment, nine species of marine mammals. Proposed activities included as part of the Sand Point City Dock Replacement Project with potential to affect marine mammals include impact hammer pile driving and vibratory pile driving and removal. We published a notice of a proposed IHA and request for comments on July 6, 2017 (82 FR 31400). We subsequently published the final notice of our issuance of the IHA on October 23, 2017 (82 FR 48987), making the IHA valid for August 1, 2018-July 31, 2019. The specified activities are expected to result in the take of nine species of marine mammals including harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata*).

On April 24, 2018, ADOT&PF informed NMFS that work would be postponed relevant to the specified activity considered in the MMPA analysis and construction will not start until spring of 2019. Therefore, ADOT&PF requested the IHA be re-issued to be valid from May 31, 2019 through May 30, 2020.

Description of the Proposed Activity and Anticipated Impacts

The 2018-2019 IHA covered the construction of a new dock in Sand Point, Alaska. Impact and vibratory driving of piles and vibratory pile removal were expected to take place over a total of approximately 32 working days within a 5-month window from August 1, 2019 through December 31, 2019. However, due to the potential for unexpected delays, up to 40 working days may be required. The new dock would be supported by approximately 52 round, 30-inch-diameter, 100-foot-long permanent steel pipe piles. Fender piles installed at the dock face would consist of 8 round, 24-inch-diameter, 80-foot-long permanent steel pipe piles. The single mooring dolphin would consist of 3 round, 24-inch-diameter, 120-foot-long permanent battered steel pipe piles. This equates to a total of 63 permanent piles. Up to 90 temporary piles would be installed and removed during construction of the dock and would be either H-piles or pipe piles with a diameter of less than 24 inches.

NMFS refers the reader to the documents related to the previously issued IHA for more detailed description of the project activities. These previous documents include the *Federal Register* notice of the issuance of the 2018-2019 IHA for ADOT&PF's Sand Point City Dock Replacement Project (82 FR 48987; October 23, 2017), ADOT&PF's application, the *Federal Register* notice of the proposed IHA (82 FR 31400; July 6, 2017) and all associated references and documents.

Detailed Description of the Action—A detailed description of the proposed vibratory and impact pile driving activities at Sand Point City Dock is found in these previous documents. The location, timing (including the August 1, 2019 – December 31 2019 work window), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices.

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the current IHA.

Potential Effects on Marine Mammals—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

Estimated Take—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. The source levels, were also unchanged from the previously issued IHA, and NMFS' 2016 acoustic technical guidance was used to address new acoustic thresholds in the notice of issuance of the 2018 IHA.

Description of Proposed Mitigation, Monitoring and Reporting Measures—A

description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical in this issued IHA. The following measures would apply to ADOT&PFs mitigation requirements:

Establishment of Shutdown Zone—For all pile driving activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones are intended to contain areas in which SPLs equal or exceed acoustic injury criteria for some authorized species, based on NMFS’ acoustic technical guidance published in the **Federal Register** on August 4, 2016 (81 FR 51693).

Establishment of Monitoring Zones—ADOT&PF will identify Level A take zones which are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). During impact installation of 30-inch and 24-inch piles, a 100-meter shutdown zone would not be sufficient to prevent Level A take of low-frequency cetaceans (*i.e.*, humpback whales), high-frequency cetaceans (*i.e.*, harbor porpoises), or phocid pinnipeds (*i.e.*, harbor seals). For this reason, Level A take for small numbers of humpback whales, harbor porpoises, and harbor seals is authorized. To account for potential variations in daily productivity during impact installation, isopleths were calculated for different numbers of piles that could be installed each day. ADOT&PF will identify Level B disturbance zones which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the

shutdown zone and thus prepare for potential shutdowns of activity. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 48987; October 23, 2017) which are based on the distance and size of the monitoring and shutdown zones. The same protocols are contained in this 2019-2020 IHA.

Soft Start—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring — Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 30 minutes for medium and large-sized odontocetes and mysticetes and 15 minutes for small cetaceans and pinnipeds.

Visual Marine Mammal Observation—Monitoring will be conducted by qualified marine mammal observers (MMOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the 2018-2019 IHA (82 FR 48987; October 23, 2017). In order to effectively monitor the pile driving monitoring zones, two MMOs will be positioned at the best practical vantage point(s). If

waters exceed a sea-state which restricts the observers' ability to make observations within 100 m of the pile driving activity (*e.g.*, excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. MMOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the 2018-2019 IHA (82 FR 48987; October 23, 2017). At the conclusion of the in-water construction work, ADOT&PF will provide NMSF with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

Determinations

ADOT&PF proposes to conduct activities identical to those covered in the previous 2018 IHA. As described above, the number of estimated takes of the same stocks of marine mammals is the same as those authorized in the 2018 IHA that were found to meet the negligible impact and small numbers standards. The authorized take of marine mammal species is shown in Table 1. Our analysis shows that between <0.01 percent and 2.89 percent of the populations of affected stocks could be taken by harassment. Therefore, the numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations

Table 11. Summary of the estimated numbers of marine mammals potentially exposed to Level A and Level B harassment noise levels.

Species (DPS/Stock)	Estimated Number of Individuals Potentially Exposed to the Level A Harassment Threshold	Estimated Number of Individuals Potentially Exposed to the Level B Harassment Threshold	DPS/Stock Abundance (DPS/Stock)	Percent of Population Exposed to Level A or Level B Thresholds
Steller sea lion (wDPS)	0	960	50,983	1.88
Harbor seal (Cook Inlet/Shelikof)	27	53	27,386	0.29

Strait)				
Harbor porpoise (Gulf of Alaska)	16	33	31,046	0.16
Dall's porpoise (Alaska)	0	4	83,400	<0.01
Killer whale (Gulf of Alaska, Aleutian Islands, and Bering Sea transient or Alaska resident)	0	14	587 (transient) 2,347 (resident)	2.38 (transient) 0.6 (resident)
Humpback whale ¹ (Central North Pacific/Western North Pacific)	2	30	10,103 (Central NP) 1,107 (Western NP)	0.32 2.89
Fin whale (Northeast Pacific)	0	6	1,368 ²	0.44
Gray whale (Eastern North Pacific)	0	2	20,990	<0.01
Minke whale (Alaska)	0	3	2,020 ³	<0.01
Total	45	1,105	N/A	N/A

¹The Hawaii DPS is estimated to account for approximately 89 percent of all humpback whales in the Gulf of Alaska, whereas the Mexico and Western North Pacific DPSs account for approximately 10.5% and 0.5%, respectively (Wade *et al.*, 2016; NMFS 2016). Therefore, an estimated 28 animals from Hawaii DPS; 3 from Mexico DPS; and 1 from Western North Pacific DPS.

²Based on 2010 survey of animals north and west of Kenai Peninsula in U.S. waters and is likely an underestimate (Muto *et al.*, 2016b).

³Based on 2010 survey on Eastern Bering Sea shelf. Considered provisional and not representative of abundance of entire stock (Muto *et al.*, 2016a).

N/A: Not Applicable

This final IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to

the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion in September 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. There are four distinct population segments (DPSs) of three marine mammal species that are listed under the ESA with confirmed or possible occurrence in the study area: the Western North Pacific DPS and Mexico DPS of humpback whale; the Western DPS of Steller sea lion; and fin whale. The Biological Opinion concluded that while the issuance of the authorization may adversely affect members of some listed species it is not likely to jeopardize the continued existence of any listed marine mammal species or destroy or modify any critical habitat. Note that the only modification to the IHA is a change in effective dates. No additional take has been requested or is being authorized and all mitigation measures described in the Biological Opinion will continue to be implemented to limit Level A and Level B exposures. For

these reasons, we anticipate no new or changed effects of the action beyond what was considered in the 2017 Biological Opinion.

Authorization

NMFS has issued an IHA to ADOT&PF for the Sand Point City Dock Replacement Project for 2019-2020, provided the previously described mitigation, monitoring, and reporting requirements from the 2018-2019 IHA are incorporated.

Dated: August 1, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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